Teratai Sanjung Holdings (M) Sdn Bhd v Lembaga Pemasaran Pertanian Persekutuan

HIGH COURT (KUALA LUMPUR) — SUIT NO 22NCVC-609–11 OF 2015
FAIZAH JAMALUDIN JC
12 JUNE 2018

Companies and Corporations — Indoor management rule — Apparent authority — Parties entered into supply agreement — Agreement repudiated by defendant — Whether defendant's officer who executed supply agreement had apparent or ostensible authority to sign agreement — Whether plaintiff put on inquiry — Whether plaintiff make inquiry — Whether plaintiff could rely on indoor management rule or Turquand rule — Whether supply agreement valid, binding and enforceable

Contract — Agreement — Validity — Parties entered into supply agreement — Agreement repudiated by defendant — Whether defendant's officer who executed supply agreement had actual or apparent/ostensible authority to sign agreement — Whether plaintiff could rely on indoor management rule or Turquand rule — Whether supply agreement valid, binding and enforceable

The disputes between the plaintiff and the defendant arose from the alleged wrongful repudiation by the defendant of an agreement entered by the plaintiff as seller and the defendant as buyer dated 27 October 2014 ('the supply agreement') for the supply of livestock cattle, beef carcass and milk ('beef and dairy'). The plaintiff sought a declaration that the defendant's repudiation of the supply agreement was wrongful and damages in the sum of RM1,652,640,238.72 for loss of future profits. In defence, the defendant submitted that the supply agreement was not valid, binding and/or enforceable because Encik Zainal bin Alip ('ZAA') had executed the supply agreement in excess of his authority and in breach of the defendant's internal procedures. The defendant said that its highest management and Board of Directors never knew about the supply agreement and that it neither authorised nor appointed ZAA to sign the supply agreement. The issues for determination were: (a) whether ZAA when he signed the supply agreement had the necessary authority to sign the agreement on behalf of the defendant; and (b) whether the plaintiff as an outsider to the defendant could rely on the 'indoor management rule' and assume that ZAA was authorised to act on the defendant's behalf to execute the supply agreement and that the defendant's relevant internal policies and procedures had been complied with.

Held, dismissing the plaintiff's claim against the defendant with no order as to costs:

(1) The defendant's director general testified that, under the defendant's circular, ZAA's authority for the sale and purchase of cows was limited up to the value of RM50,000. The sum to be paid by the defendant for the first ten years under the terms of the supply agreement (based on the plaintiff's calculation) was RM9,940,482,460 ie approximately RM10 billion. ZAA's authority to negotiate an agreement was limited to the sum of RM50,000. Clearly, he did not have the actual authority to enter into an agreement valued at RM10 billion on behalf of the defendant (see paras 7 & 23–25).

(2) The defendant in permitting ZAA to act in the manner he did in the conduct of the defendant's business, represented to the plaintiff that ZAA had the authority to negotiate and enter into the supply agreement on behalf of the defendant with the plaintiff. Accordingly, based on the evidence and the surrounding facts and circumstances prior to the execution of the supply agreement, the court found that the defendant had represented to the plaintiff that ZAA had the apparent or ostensible authority to enter on behalf of the defendant a contract of a kind and for a value within the scope of the supply agreement (see paras 7 & 33–34).

(3) The plaintiff was put on inquiry based on the provisions of the Federal Agricultural Marketing Act 1965 as to the irregularity in the defendant's internal procedures. Based on the evidence, the plaintiff did not make any inquiry, as such, the plaintiff could not rely on the 'indoor management rule' or *Turquand* rule. Based on the above, the supply agreement was not a valid, binding and enforceable contract (see paras 8, 49–51 & 54).

[Bahasa Malaysia summary

Pertikaian di antara plaintif dan defendan berbangkit daripada dakwaan pembatalan salah oleh defendan terhadap perjanjian yang dimasuki oleh palintif sebagai penjual dan defendan sebagaai pembeli bertarikh 27 Oktober 2014 ('perjanjian pembekalan') bagi pembekalan ternakan lembu, karkas daging dan susu ('daging dan hasil tenusu'). Plaintif memohon pengisytiharan bahawa pembatalan defendan terhadap perjanjian pembekalan tersebut adalah salah dan ganti rugi dalam jumlah RM1,652,640,238.72 bagi kehilangan keuntungan masa hadapan. Defendan dalam pembelaan berhujah bahawa perjanjian pembekalan tidak sah, mengikat dan/atau berkuat kuasa kerana Encik Zainal bin Alip ('ZAA') telah menyempurnakan perjanjian pembekalan berlebihan kuasanya dan melanggar prosedur-prosedur dalaman defendan. Defendan menyatakan bahawa pihak pengurusan tertingginya dan Lembaga Pengarah tidak pernah mengetahui mengenai perjanjian pembekalan dan ia tidak pernah membenarkan atau melantik ZAA menandatangani perjanjian

pembekalan. Isu-isu untuk penentuan adalah: (a) sama ada ZAA apabila menandatangani perjanjian pembekalan mempunyai kebenaran yang perlu untuk menandatangani perjanjian bagi pihak defendan; dan (b) sama ada plaintif sebagai orang luar kepada defendan boleh bergantung ke atas 'indoor management rule' dan menganggap bahawa ZAA dibenarkan untuk bertindak bagi pihak defendan bagi menyempurnakan perjanjian pembekalan dan bahawa polisi-polisi dan prosedur-prosedur dalaman relevan defendan telah dipatuhi.

Diputuskan, menolak tuntutan plaintif terhadap defendan tanpa perintah kepada kos:

(1) Pengarah defendan memberi keterangan bahawa, di bawah pekeliling defendan, kuasa ZAA untuk jualan dan pembelian lembu-lembu adalah terhad kepada nilai sebanyak RM50,000. Jumlah untuk dibayar oleh defendan bagi sepuluh tahun pertama di bawah terma-terma perjanjian pembekalan (berdasarkan pengiraan plaintif) adalah RM9,940,482,460 iaitu lebih kurang RM10 bilion. Kuasa ZAA untuk merunding perjanjian adalah terhad kepada jumlah sebanyak RM50,000. Jelas, dia tidak mempunyai kuasa sebenar untuk memasuki perjanjian bernilai RM10 bilion bagi pihak defendan (lihat perenggan 7 & 23–25).

(2) Defendan dalam membenarkan ZAA untuk bertindak dalam cara yang dia lakukan dalam menjalankan perniagaan defendan, merepresentasikan kepada plaintif bahawa ZAA mempunyai kebenaran untuk berunding dan memasuki perjanjian pembekalan bagi pihak defendan dengan plaintif. Dengan itu, berdasarkan keterangan dan fakta dan keadaan sekeliling sebelum penyempurnaan perjanjian pembekalan, mahkamah mendapati bahawa defendan telah merepresentasikan kepada plaintif yang ZAA mempunyai kuasa yang jelas dan boleh dipercayai untuk memasuki bagi pihak defendan kontrak dan untuk nilai dalam skop perjanjian pembekalan (lihat perenggan 7 & 33–34).

(3) Plaintif diletakkan atas siasatan berdasarkan peruntukan-peruntukan Akta Lembaga Pemasaran Pertanian Persekutuan 1965 terhadap luar aturan dalam prosedur-prosedur dalaman defendan. Berdasarkan keterangan, plaintif tidak membuat apa-apa siasatan, dengan itu, plaintif tidak dapat bergantung ke atas 'indoor management rule' atau peraturan *Turquand*. Berdasarkan di atas, perjanjian pembekalan adalah kontrak yang tidak sah, mengikat dan berkuat kuasa (lihat perenggan 8, 49–51 & 54).]

Notes

For a case on apparent authority, see 3(1) *Mallal's Digest* (5th Ed, 2018 Reissue) para 507.

A For cases on validity, see 3(2) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 3582–3583.

Cases referred to

B *Chew Hock San & Ors v Connaught Housing Development Sdn Bhd* [1985] 1 MLJ 350, FC (refd)

Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480, CA (folld)

Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors [1998] 1 MLJ 465, FC (refd)

C *Royal British Bank v Turquand* (1856) 119 ER 886; [1843–60] All ER Rep 435 (refd)

Legislation referred to

D Companies Act 1965 s 132C

Federal Agricultural Marketing Act 1965 s 2(1), 2(2), First Schedule

Karlos Israphil Bendlin (Jowe Ninoy Almeida with him) (Amin-Karlos) for the plaintiff.

E *Yusman bin Che Aman (Md Ridzuan bin Othman and Zorah Jan Newaz with him) (ZJ Newaz & Co) for the defendant.*

Faizah Jamaludin JC:

F INTRODUCTION

[1] This is a dispute between the plaintiff, Teratai Sanjung Holdings (M) Sdn Bhd, ('Teratai'), a limited liability company incorporated under the Companies Act 1965 and the defendant, Lembaga Pemasaran Pertanian Persekutuan, ('FAMA'), a statutory body incorporated under the Federal Agricultural Marketing Act 1965 ('the FAMA Act').

G

[2] The dispute relates to the alleged wrongful repudiation by FAMA of an agreement entered by Teratai as seller and FAMA as buyer dated 27 October 2014 ('the supply agreement') for the supply of livestock cattle, beef carcass and milk ('beef and dairy').

H

[3] The supply agreement was signed for and on behalf of FAMA by Encik Zainal bin Alip ('ZAA'). ZAA, when he signed the supply agreement, held the position of 'Pengarah Bahagian Ternakan dan Akuakultur' in FAMA.

I

[4] It is Teratai's case that FAMA had wrongly repudiated the supply agreement. Teratai claims that as a result of FAMA's wrongful repudiation of the supply agreement, it suffered future loss of net profits of more than

RM1.6 billion: specifically the sum of RM1,652,640,238.72.

[5] Teratai seeks a declaration that FAMA's repudiation of the agreement was wrongful and damages in the sum of RM1,652,640,238.72 for loss of future profits.

[6] FAMA does not deny that ZAA had signed the supply agreement. However, it denies any liability to Teratai's claim. The essence of FAMA's defence is that the supply agreement is not valid, binding and/or enforceable because ZAA had executed the supply agreement in excess of his authority and in breach of FAMA's internal procedures. FAMA says that its highest management and Board of Directors never knew about the supply agreement and that it neither authorised nor appointed ZAA to sign the supply agreement.

[7] At the conclusion of trial, I found that ZAA did not have any actual authority to sign the supply agreement on behalf of FAMA. Nevertheless, FAMA by its conduct had represented that ZAA had apparent or ostensible authority to sign the supply agreement on FAMA's behalf.

[8] I also found that Teratai was put on inquiry based on the provisions of the FAMA Act as to the irregularity in FAMA's internal procedures. I held that as Teratai did not make any inquiry, it cannot rely on the 'indoor management rule' or *Turquand* rule.

[9] For these reasons, I found that the supply agreement was not a valid, binding and enforceable contract and dismissed Teratai's claim against FAMA.

[10] The full grounds of my judgment are set out herein.

Trial

[11] The trial of this suit was held over six days and the witnesses who gave evidence at the trial were the following:

Teratai's witnesses

WITNESS	NAME	POSITION
SP1	Syahrul Anwar bin Saleh	Director of Human Capital Solution, Adecco Personnel Sdn Bhd
SP2	Ahmad Zaki bin Abdul Wahab	Chief Executive Officer, Fast Airfreight & Forwarding (M) Sdn Bhd

SP3	Jasmin Yoong Soo Mann	Human Resources Director, Jobstreet Shared Services Sdn Bhd
SP4	Dato' Rosli bin Hashim	Director, Teratai
SP5	Ismah bt Mohd Sidek	Chief Financial Officer, Teratai

FAMA's witnesses

WITNESS	NAME	POSITION
SD1	Dato' Ahmad bin Ishak	Director-General, FAMA
SD2	Mohd Anis bin Mohd Yasin	Pengarah Kanan Bahagian Urusniaga Segar, FAMA
SD3	Zainal Abidin Yang Razali	Pengarah Negeri Johor, FAMA
SD4	Zainal Abidin bin Alip ('ZAA')	Pengarah, Bahagian Knowledge Management, FAMA
SD5	Hj Rohaizad bin Ridzwan	Bekas Timbalan Ketua Pengarah (Pembangunan), FAMA
SD6	Pauzi bin Yaman	Chief Executive Officer, FAMA Corp Sdn Bhd
SD7	Norhayati bt Maulud	Legal Officer, FAMA
SD8	Datuk Sharifah bt Hashim	Timbalan Ketua Pengarah (Operasi), FAMA

CHRONOLOGY OF KEY EVENTS

[12] The chronology of key events in this suit are set out below. The chronology is divided to: (i) events leading up to the signing of the supply agreement; and (ii) events after the signing of the supply agreement.

(i) Events leading up to the signing of the supply agreement

DATE	EVENT
Aug–Sept 2014	Meetings between SP4 and ZAA discussing the proposal for Teratai to supply beef and dairy to FAMA.
15 September 2014 (exh P14)	FAMA issued a 'to whom it may concern' (kepada yang berkenaan) letter, signed by ZAA, entitled 'Pembekalan Sampel Karkas Lembu Perancis' stating that Teratai had been appointed to supply beef carcass for a research event on the quality of imported beef that FAMA is holding on 22 September 2014 and requested for Teratai to be exempted from import protocols.

22 September 2014 (exh P15)	FAMA held an event at its head office entitled 'Program Menangani Manipulasi Orang Tengah'. SP4 attended as Teratai's representative and FAMA's guest of honour.
	FAMA held a 'Program Ujirasa Daging Lembu' at its head-office to test the sample imported French beef supplied by Teratai.
23 September 2014 (exh P16)	Teratai issued a letter to FAMA entitled 'Penyerahan Kertas Cadangan Sebut Harga ('Proforma Invoice') Bagi Bekalan Karkas Lembu Perancis Kepada FAMA') which contained proforma invoices, quotations and product specifications for beef carcass imported from France.
1 October 2014 (exh P22)	FAMA issued a letter to Teratai appointing Teratai to supply livestock cattle and beef carcass at an estimated transaction value of RM500,000,000.
7 October 2014 (exhs P24 and P25)	FAMA held 'Majlis Sampling for Market Valuation' at its headquarters to sample French imported beef supplied by Teratai.
15 October 2014 (exhs P26 and P27 are photographs of the meeting and copies of slides presented at the meeting)	FAMA and Teratai attended a meeting with Agro Bank, FELCRA Bhd, Gedung Makan Negara, Espek Livestock Sdn Bhd and Pertubuhan Peladang Kebangsaan (NAFAS) in Shah Alam to discuss collaboration between the government agencies,financial institutions and the private sector on supply of cows and/or imported beef.
	The meeting is referred to in a letter dated 24 October 2014 (exh P78) from FAMA to the participants of the meeting. The letter was signed by ZAA and copied to the Director General of FAMA ('SD1').
27 October 2014 (exh P28)	FAMA and Teratai executed the supply agreement.

(ii) Events after the signing of the supply agreement

DATE	EVENT
7 November 2014 (exh P29)	Teratai and Rockefeller Plaza Broker LLC ('Rockefeller') executed the Exclusive Meat and Milk Supply Agreement dated 7 November 2014 (the 'French supplier agreement') for the supply of beef and dairy from France to Teratai.

11 November 2014 (exh P30)	FAMA wrote a letter, signed by SD4, addressed to the (i) Malaysian Quarantine and Inspection Services Department ('MAQIS'), (ii) Department of Veterinary Services ('DVS'), (iii) Jabatan Kemajuan Islam Malaysia ('JAKIM') and (iv) Jabatan Kastam DiRaja Malaysia ('Kastam'), informing them FAMA had executed the supply agreement with the plaintiff and requested the addressee departments to support and cooperate in assisting and the Teratai to successfully execute its responsibility under the supply agreement.
30 January 2015 (exh P40)	FAMA informed Rockefeller that it had executed the supply agreement with Teratai and that it is ready to place an order for beef & diary by March 2015 and that FAMA is 'currently working rapidly' with all relevant ministries including DVS and JAKIM to obtain the necessary approvals and quota. FAMA's letter was signed by ZAA on behalf of the Director General of FAMA.
13 March 2015 (exh P44)	Ikhtiar Factoring Sdn Bhd ('Ikhtiar Factoring') informed FAMA that it had granted facilities of RM150m to Teratai to finance the transaction.
24 March 2015 (exh P47)	Teratai requested FAMA to perform its obligations under the supply agreement and to commence the transaction.
16 April 2015	Teratai met with FAMA at Quality Hotel, Kuala Lumpur
27 April 2015 (exh P3) minutes of meeting	FAMA chaired a meeting at its headoffice entitled 'Mesyuarat Kerjasama Rantaian Perbekalan Lembu Import' attended by Teratai and others including the Ministry of Agriculture, DVS, Felcra Livestock, Espek Livestock, Johor Corp

11 May 2015 (exh P54)	Teratai wrote to the Director General of FAMA requesting FAMA to commence the transaction under the supply agreement by, among others, issuing the bank guarantee and purchase order.
22 May 2015	FAMA's Director General wrote a letter (exh P55) to Teratai informing it that FAMA does not recognise the validity of the supply agreement because it was executed without the knowledge of the FAMA's highest management and not in accordance with procedure. And that ZAA who signed the supply agreement did not have the authority to do so on FAMA's behalf.
	FAMA's Director General wrote another letter (exh D73) stating its support of Teratai's efforts to be 'pemain utama industry ruminan di Malaysia'.
2 June 2015 (exh P56)	Teratai wrote a letter to FAMA giving it 30-business day notice under cl 17 of the supply agreement to remedy its breach of contract by performing its obligations under the supply agreement.
30 July 2015 (exh P57)	Teratai terminated the supply agreement through a written notice pursuant to FAMA's failure to remedy its breach of the supply agreement.
14 August 2015 (exh P58)	FAMA replied Teratai's notice of termination and reiterated its position that the supply agreement is invalid.

ISSUES BEFORE THIS COURT

[13] In determining whether FAMA had wrongly repudiated the supply agreement, this court must decide whether the supply agreement is a valid, binding and enforceable contract. In doing so, I have to ascertain whether ZAA when he signed the supply agreement had the necessary authority to sign the agreement on behalf of FAMA. The authority can be either: (i) actual authority; or (ii) apparent or ostensible authority.

[14] The next issue to be decided is whether Teratai as an outsider to FAMA can rely on the 'indoor management rule' and assume that ZAA was authorised

to act on FAMA's behalf to execute the supply agreement and that FAMA's relevant internal policies and procedures had been complied with.

[15] It is settled law that if Teratai was put on inquiry of the irregularity in FAMA's internal policies or procedures and it didn't make such inquiries, it cannot rely on the 'indoor management rule'.

Did ZAA have actual or apparent/ostensible authority to execute the supply agreement on behalf of FAMA?

[16] It is FAMA's case that ZAA did not have any authority to execute the supply agreement on FAMA's behalf. As stated in the Introduction section above, FAMA's pleaded case is that its highest management and Board of Directors did not know about the supply agreement and did not give any authority or mandate to any of its employees to execute the supply agreement.

[17] FAMA is body corporate created by the FAMA Act. The long title of the FAMA Act states that it is:

> An Act to incorporate the Federal Agricultural Marketing Authority to supervise, co-ordinate, regulate and improve the marketing of agricultural produce in Malaysia including the importing and exporting of agricultural produce, to provide credit facilities for such marketing and for matters connected therewith.

Section 2(1) of the FAMA Act provides:

> 2(1) There is hereby established a body corporate by the name of 'Federal Agricultural Marketing Authority' (hereinafter referred to as 'the Authority') with perpetual succession and a common seal, and power to acquire and hold movable or immovable property and to dispose thereof or otherwise deal therewith.

[18] The meaning of and distinction between actual authority and apparent or ostensible authority was explained by the Federal Court in *Chew Hock San & Ors v Connaught Housing Development Sdn Bhd* [1985] 1 MLJ 350. It cited with approval the dicta of Diplock LJ in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480. Syed Agil Barakbah FJ (delivering the judgment of the Federal Court) held as follows:

> The legal position of a company or a corporation is that being a fictitious person it can only do any act which includes making a representation through its agents or servants. The capacity of such a company is limited by its memorandum and articles of association. In other words, it can act within the ambit of the powers or provisions expressly provided in the memorandum and articles of association. In the ordinary course of business, a third party when entering into a contract with a company normally relies on the authority of an agent of the company.
>
> Now, the difference between an actual and an apparent or ostensible authority and the principles applicable thereto are adequately explained by Diplock LJ in *Freeman*

& Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480 at pp 502–504 as follows:

> It is necessary at the outset to distinguish between an 'actual' authority of an agent on the one hand, and an 'apparent' or 'ostensible' authority on the other. *Actual authority and apparent authority are quite independent of one another. Generally they co-exist and coincide, but either may exist without the other and their respective scopes may be different*. As I shall endeavour to show, it is upon the apparent authority of the agent that the contractor normally relies in the ordinary course of business when entering into contracts.
>
> *An 'actual' authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties*. Its scope is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties. To this agreement the contractor is a stranger; he may be totally ignorant of the existence of any authority on the part of the agent. Nevertheless, if the agent does enter into a contract pursuant to the 'actual' authority, it does create contractual rights and liabilities between the principal and the contractor ...
>
> *An 'apparent' or 'ostensible' authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed upon him by such contract*. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. *The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.*
>
> In ordinary business dealings the contractor at the time of entering into the contract can in the nature of things hardly ever rely on the 'actual' authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. *All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority*. (Emphasis added.)

Actual authority?

[19] At trial, FAMA produced its internal circular entitled 'Pekeliling Perniagaan FAMA Bil. 1 Tahun 2012 — Kuasa-Kuasa Bagi Melulus Pembelian dan Penjualan Barangan Niaga Serta Pemberian Kemudahan Kredit Dalam Operasi Urusniaga FAMA' ('FAMA circular').

A **[20]** The FAMA circular sets out the authority granted by FAMA to its officers designated as 'Pegawai Operasi' to transact with third parties for sale and purchase of animal livestock, including the authority to determine transaction price and to execute formal agreements on behalf of FAMA. The said acts fall within the scope or ordinary duties of FAMA's 'Pegawai Operasi'.

B

[21] It is not disputed that the department in FAMA dealing with transactions involving the sale and purchase of animal livestock and aquaculture is 'Bahagian Ternakan dan Akuakultur'. ZAA as Pengarah Bahagian Ternakan dan Akuakultur was the head of the department at the
C material time. On FAMA's website and in all correspondence issued by ZAA on FAMA's behalf, ZAA's position is stated as 'Pengarah Bahagian Ternakan dan Akuakultur'. In the English language letters, issued by ZAA on FAMA's behalf, ZAA signed the letters as 'Division Director (Livestock and Aquaculture) pp
D Director General, Federal Agricultural Marketing Authority'.

[22] It is also agreed that at all material times throughout ZAA's dealings with Teratai, before and after the execution of the supply agreement, ZAA held the post of 'Pengarah Bahagian Ternakan dan Akuakultur'.

E

[23] FAMA's Director General ('SD1') testified that ZAA as 'Pengarah Bahagian Ternakan dan Akuakultur' is a 'Pegawai Operasi' under the FAMA circular and that he has the authority in relation to the sale and purchase of
F livestock to: (i) correspond with third parties; (ii) negotiate the terms of sale and purchase, including price, with third parties; and (iii) execute agreements on such transactions with third parties. SD1 testified that, under the FAMA circular, ZAA's authority for the sale and purchase of cows is limited up to the value of RM50,000.

G

[24] The supply agreement is for a period of ten years and is automatically renewed for further periods of five years until terminated by either Teratai or FAMA. The sum to be paid by FAMA for the first ten years under the terms of the supply agreement (based on Teratai's calculation) is RM9,940,482,460: ie
H approximately RM10 billion.

[25] ZAA's authority to negotiate and agreements is limited to the sum of RM50,000 only. Clearly, he did not have the actual authority to enter into an agreement valued at RM10 billion on behalf of FAMA.

I

[26] For these reasons, I find that ZAA did not have the actual authority to enter into the supply agreement with Teratai on FAMA's behalf.

(ii) Apparent or ostensible authority?

[27] Having found that ZAA did not have actual authority to enter into supply agreement on FAMA's behalf, the next issue to be decided is whether ZAA had apparent or ostensible authority to enter into the supply agreement on FAMA's behalf based upon its representation as the principal or upon ZAA's representation as FAMA's agent to Teratai.

[28] In this respect, as held by Lord Diplock in *Freeman & Lockyer*, 'the representation' that creates 'apparent' or 'ostensible' authority may take a variety of forms of which the commonest is representation by conduct, namely, by permitting the agent, to act in some way in the conduct of the principal's business with third parties.

[29] As held by the Federal Court in *Chew Hock San*:

> By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal's business has usually 'actual' authority to enter into.

[30] Prior to the execution of the supply agreement between FAMA and Teratai, the facts show that FAMA had made the following representations in relation to the sale and purchase of livestock:

(a) on FAMA's official website, ZAA's position in FAMA is advertised as 'Pengarah Bahagian Ternakan dan Akuakultur';

(b) FAMA permitted ZAA to conduct its business of buying and selling livestock with third parties. Such dealings include determining the price, negotiating the terms and conditions of the agreements and executing the agreements with third parties;

(c) FAMA through ZAA organised a program entitled 'Program Memenangi Manipulasi Orang Tengah' at its headquarters on 22 September 2014, which Dato' Rosli Hashim ('SP4') Teratai's managing director attended as FAMA's guest of honour. The program was followed by 'Program Ujirasa Daging Lembu', also organised by ZAA on FAMA's behalf at its headquarters, where guests tested the sample imported French beef supplied by Teratai;

(d) FAMA allowed ZAA during his briefing at the program to announce to the guests present that Teratai is the beef importer that will be appointed by FAMA. FAMA's Timbalan Ketua Pengarah (Operasi) ('SD8') was present at the program;

(e) FAMA had on 1 October 2014 issued a letter to Teratai appointing it to supply livestock cattle and beef carcass at an estimated value of RM500m ('appointment letter');

(f) after the appointment letter was issued, FAMA permitted ZAA to organise another event on 7 October 2016 entitled 'Majlis Sampling for Market Valuation' at its headquarters to sample French imported beef supplied by Teratai. FAMA's Director General, attended this event; and

(g) on 15 October 2014, Teratai and FAMA had attended a meeting together with other government agencies, as detailed in the chronology of events above. The minutes of this meeting was copied to SD1.

[31] FAMA had also forwarded to Teratai on 1 October 2014 its standard form contract for the sale and purchase of livestock entitled 'Kontrak Bagi Pembekalan Lembu' (exh P23) ('contract template'). Clause 29 of the contract template states that in the event of a dispute between FAMA and the supplier, the dispute is to be referred to 'Pengarah Bahagian Cawangan Ternakan dan Akuakultur FAMA' and that his decision is final and binding on the parties. ZAA was the 'Pengarah Bahagian Cawangan Ternakan dan Akuakultur FAMA' at the time in question.

[32] In my view, based on these events and circumstances leading up to the signing of the supply agreement, it was not unreasonable for Teratai to conclude that ZAA was acting with FAMA's authority in relation to its appointment of Teratai as its beef importer and in ZAA entering into the supply agreement on FAMA's behalf.

[33] Applying the principle of apparent or ostensible authority in *Freeman & Lockyer*, as approved in *Chew Hock San*, to this instant case, FAMA in permitting ZAA to act in the manner he did in the conduct FAMA's business, represented to Teratai that ZAA had the authority to negotiate and enter into the supply agreement on behalf of FAMA with Teratai.

[34] Accordingly, based on the evidence and the surrounding facts and circumstances prior to the execution of the supply agreement, I find that FAMA had represented to Teratai that ZAA had the apparent or ostensible authority to enter on behalf of FAMA a contract of a kind and for a value within the scope of the supply agreement.

Is Teratai entitled to rely on the 'indoor management rule?

[35] Having found that ZAA had apparent or ostensible authority to enter into the supply agreement with Teratai on FAMA's behalf, the next issue to be decided is whether Teratai is entitled to rely on the 'indoor management rule'.

[36] Whether or not Teratai is entitled to rely on the rule depends on whether it was put on inquiry as to the irregularity in FAMA's internal policies or procedures.

[37] The question to be determined by this Court is whether Teratai should or ought to have known of the irregularity.

Indoor management rule

[38] The 'indoor management rule' or the 'Turquand rule' established in *Royal British Bank v Turquand* (1856) 119 ER 886; [1843–60] All ER Rep 435, protects third parties dealing with a company in good faith who are entitled to assume that acts within its constitution and powers have been properly performed, and that the third parties are not bound to inquire whether acts of internal management have been regular.

[39] There is, however, an exception to this rule. A third party who knows or ought to have known of an irregularity in the body corporate's rules and procedures cannot rely on the indoor management rule.

[40] The Federal Court in *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465 held that:

> *The rule in Turquand's case cannot, however, be invoked by an outsider who knows or ought to know that there is an irregularity*.
>
> More particularly, outsiders dealing with a company who know that some relevant procedure internal to the company has not been followed cannot invoke the benefit of the indoor management rule (see *Howard v Patent Ivory Manufacturing Co* (1888) 38 Ch D 156). This is an exception to the rule in *Turquand's* case and the burden of establishing it lies on the party invoking the exception and in this case, that would be the Father and his faction. *Furthermore, dealing with a company could also be affected by knowledge of facts which would put a reasonable person on inquiry; in other words, they would be deemed to know what a reasonable person would infer from known facts*. So, for example, in *B Liggett (Liverpool) Ltd v Barclays Bank Ltd* [1928] 1 KB 48 at pp 56–56, Wright J (as he then was) said:
>
> > ... Whatever may be the exact scope of the rule in *Turquand's* case, I think it is quite clear on principle and on the authorities I have already referred to that it can never be relied upon by a person who is put on inquiry. *The rule proceeds on a presumption that certain acts have been regularly done, and if the circumstances are such that the person claiming the benefit of the rule is really put on inquiry, if there are circumstances which debar that person from relying on the prima facie presumption, then it is clear, I think, that he cannot claim the benefit of the rule* ...
>
> And, in *Morris v Kanssen & Ors* [1946] AC 459, Lord Simonds made it clear that *an outsider cannot invoke the benefit of the Turquand rule if he is put upon inquiry*. Here is what his Lordship said on this point (at p 475):

> ... He cannot presume in his own favour that things are rightly done if inquiry that he ought to make would tell him that they were wrongly done.
>
> *So also, an outsider dealing with a company cannot invoke the benefit of the Turquand rule if he could or should in the circumstances have discovered the defect by inspecting the compulsory documents filed at the Registry of Companies which are open to public inspection* (see *Irvine v Union Bank of Australia* (1877) 2 App Cas 366).
>
> The material time at which there must be knowledge or the means of knowledge is the time of entry into the transaction (see *Kanssen v Rialto (West End) Ltd & Ors* [1944] Ch 346; *Morris v Kanssen & Ors* [1946] AC 459). (Emphasis added.)

[41] Edgar Joseph FCJ in delivering the judgment of the Federal Court in *Pekan Nenas* held that:

> Whether in any given case the person dealing with a company is put upon inquiry must depend upon all the particular circumstances (per Glade LJ in *Rolled Steel Products (Holdings) Ltd* at p 285).
>
> The *policy* underlying the *Turquand* rule is business convenience and the formulation and application of the rule 'call for a fine balance' (*Northside Developments*'s case) between the competing interests of outsiders contracting with companies on the one hand, and innocent creditors and shareholders of companies, on the other.
>
> *We must add that where an outsider has been put on inquiry but has failed to inquire, it is not open to him to argue that even if inquiry had been made, the result would not have disclosed the want of authority or other irregularity.* So, for example, in *Chapleo and Wife v The Brunswick Permanent Building Society & Ors* (1880–81) 6 QBD 696 at p 715, Baggallay LJ said:
>
> > ... The plaintiffs did not inquire; and though probably if they had inquired they would have learned nothing, yet that is their misfortune and they are debarred from recovering against this society. (Emphasis added.)

Was Teratai put on inquiry?

[42] The question in this instant case is whether Teratai was put on inquiry. Should it know or ought to have known of the irregularity? Should Teratai have made inquiries with FAMA of ZAA's actual authority before signing the supply agreement?

[43] Based on the long duration and substantial monetary value of the supply agreement coupled with the express provisions of the FAMA Act, I am of the view that Teratai would have been put on inquiry regarding the irregularity and non-compliance with the FAMA's internal policies and procedure. It should have made inquiries of ZAA's authority to enter into the supply agreement on behalf of FAMA before executing the supply agreement.

[44] The supply agreement is for the supply of beef and dairy for a period of ten years. It is automatically renews for further periods of five years until terminated by either party. The sum to be paid by FAMA to Teratai for the first ten years is approximately RM10 billion. Based on its duration and value, the supply agreement is a material contract for any company or statutory body to enter into.

[45] FAMA is a statutory body created and governed by the FAMA Act. Section 2(2) of the FAMA Act states that:

> (2) The First Schedule shall have effect with respect to the Authority.

Clause 4 of the First Schedule of the FAMA Act expressly states:

> 4(1) The Authority shall have a common seal, which shall bear such device as the Authority shall approve and such seal may from time to time be broken, changed, altered or made anew, as the Authority may think fit.
>
> (2) the common seal shall be authenticated by either the Chairman or such other person as may be authorized by the Authority or by any officer authorized by either of them in writing; *and all deeds, documents and other instruments purporting to be scaled with the said seal, authenticated as aforesaid, shall until the contrary is proved be deemed to have been validly executed*:
>
> Provided that any document or instrument which if executed by a person not being a body corporate would not be required under seal *may*, in like manner, *be executed by the Authority and any such document or instrument may be executed on behalf of the Authority by any officer or servant of the Authority generally or specially authorized by the Authority in that behalf.* (Emphasis added.)

[46] The First Schedule of the FAMA Act expressly stipulates that any documents executed by FAMA's common seal and authenticated by its chairman or any other person authorised by FAMA or any person authorised by either of them in writing shall, until the contrary is proved, be deemed to have been validly executed. The proviso in the First Schedule states that if the document is not required to be executed under common seal, by a person who is not a body corporate, the document may be executed on behalf of FAMA by any officer or servant of FAMA *generally or specifically authorised* by FAMA.

[47] Following the Federal Court's decision in *Pekan Nenas*, if FAMA was a private company, Teratai would have been taken to have had notice from the company's statutory documents including its memorandum and articles of association filed with the Companies Commission of Malaysia of the restrictions on the contracting powers of the company's officials such as the requirements for a shareholders and/or board resolution prior to the company entering into a material contract.

[48] Teratai would also have been taken to have had notice of the

A requirement in s 132C of the CA 1965, which states that all acquisitions of a substantial value requires the approval of the company's shareholders at a general meeting. 'Substantial value' is defined in the CA 1965 as value exceeding 25% of the value of the company, or its total net profits or share capital of the company, whichever is the highest. If in such a situation, Teratai B did not make the inquiry and it was later discovered that the agreement was of a substantial value and the requisite shareholders' approval was not obtained prior to the execution of the agreement, Teratai would not be able to rely on the *Turquand* rule.

C

[49] Therefore, as FAMA is a body corporate established and regulated by the FAMA Act, Teratai would be put on notice based on the First Schedule of the FAMA Act, to inquire whether:

D (a) FAMA is required to execute the supply agreement by its common seal authenticated by the chairman or such other persons authorised by FAMA;

(b) if the supply agreement is not required to be executed by common seal, whether ZAA is generally or specifically authorised by FAMA to execute E the supply agreement on its behalf; and

(c) if ZAA is not duly authorised, who is generally or specifically authorised by FAMA to execute the supply agreement on its behalf.

F **[50]** The limits of authority under the FAMA circular is a general authorisation up the limit stated in the circular. A specific authority would be akin to a board of directors' resolution specifically authorising a director or officer of a company to execute a document on behalf of the company.

G **[51]** There was no evidence adduced during the trial that Teratai had made any such inquiry. The facts show that it relied on the representations made by FAMA that ZAA had the apparent or ostensible authority to execute the supply agreement on behalf of FAMA.

H **[52]** The fact that Teratai did not make any such inquiry means that it is not entitled to rely on the 'indoor management rule'. As held in *Pekan Nenas*, it is not open to Teratai to argue that even if it had made such inquiries, the result would not have disclosed the irregularity or non- compliance of FAMA's I internal procedures.

[53] For these reasons, I find that: (a) the supply agreement was not validly executed by FAMA; and (b) Teratai is not entitled to rely on the indoor management rule.

DECISION

[54] Based on the above, I find that the supply agreement is not a valid, binding and enforceable contract.

[55] Accordingly, Teratai's claim for declaratory relief and damages against FAMA is dismissed.

[56] There is no order as to costs. Each party is to bear its own costs.

Plaintiff's claim against defendant dismissed with no order as to costs.

Reported by Dzulqarnain Ab Fatar